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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1963.

No. 750

LODGE NO. 42 OF THE INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIPBUILDERS, BLACKSMITHS, FORGERS AND HELPERS, JOHN PARKHURST, WALLACE L. CLARK and CLYDE TURNER,
Petitioners,

vs.

INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIPBUILDERS, BLACKSMITHS, FORGERS AND HELPERS, and DISTRICT LODGE NO. 57 OF THE INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIPBUILDERS, BLACKSMITHS, FORGERS AND HELPERS,
Respondents.

PETITION FOR WRIT OF CERTIORARI

To the United States Court of Appeals for the Sixth Circuit.

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SUBJECT INDEX.

	Page
Reference to decisions and opinions of courts below	1
Jurisdiction of the Supreme Court	2
Question presented for review	3
The Statute involved	7
Statement of the case	9
Parties	9
Nature of action—Relief sought	10
Essential averments of Complaint	11
Order of United States District Court	15
Judgment and opinion of Court of Appeals	16
Argument	17
Copy of order of United States District Court	Appendix 23
Copy of opinion of Court of Appeals	Appendix 26

Statutes Cited.

28 U. S. C., § 1254 (1)	2
29 U. S. C., §§ 401-531	3, 4, 5, 6, 7, 13, 14, 20, 21, 22
28 U. S. C., §§ 1391-1392	7

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To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States:

May It Please the Court:

1.

REFERENCE TO DECISIONS AND OPINIONS OF COURTS BELOW.

The petitioners, Lodge No. 42 of the International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers, John Parkhurst, Wallace

L. Clark and Clyde Turner, were the plaintiffs in the United States District Court for the Middle District of Tennessee and were the plaintiffs-appellants in the United States Court of Appeals for the Sixth Circuit. In this Petition they are sometimes referred to as the plaintiffs. They file this Petition for Certiorari to reverse the judgment and decree of the United States Court of Appeals for the Sixth Circuit which was entered on November 18, 1963. The Court of Appeals in a per curiam opinion affirmed the judgment and decree of the United States District Court for the Middle District of Tennessee, the Honorable Frank Gray, Jr., Judge, dated August 1, 1962, which said judgment and decree dismissed the plaintiffs' suit for improper venue. The defendants' motion to dismiss was based upon several grounds including jurisdictional grounds but the ruling of the District Court was limited and confined to the question of venue. Copies of the opinions of the United States District Court and of the United States Court of Appeals are appended hereto. Petitioners are advised that neither of said opinions has been officially reported.

2.

JURISDICTION OF THE SUPREME COURT.

Jurisdiction to review the judgment, decree and opinion of the United States Court of Appeals is conferred upon the Supreme Court of the United States by 28 U. S. C., § 1254 (1). Said judgment was entered and the opinion was filed on November 18, 1963.

QUESTION PRESENTED FOR REVIEW

The only question presented for review is whether venue was properly laid in the United States District Court for the Middle District of Tennessee.

Other questions were raised by defendants' motion to dismiss but they were not acted upon, the District Judge stating in his order: "Since the case would in any event have to be dismissed for improper venue, it will be unnecessary to discuss the process and jurisdictional questions." The Court of Appeals affirmed the order and judgment of the District Court. No question is presented therefore other than that of venue.

The complaint alleges violations of the Labor Management Reporting and Disclosure Act of 1959, known as the Landrum-Griffin Act, Public Law 86-257, 86th Congress, S. 1555, September 14, 1959, 73 Stat. 519. Most of the provisions of this Act have been codified in 29 U. S. C., §§ 401-531.

The complaint alleges violations of plaintiffs' individual rights secured to them by § 101 (a) (1), (2) and (5) of the Act, 29 U. S. C., § 411 (a) (1), (2) and (5), which reads as follows:

> "(a) (1) Equal Rights.—Every member of a labor organization shall have equal rights and privileges within such organization to nominate candidates, to vote in elections or referendums of the labor organization, to attend membership meetings, and to participate in the deliberations and voting upon the business of such meetings, subject to reasonable rules and regulations in such organization's constitution and by laws.
>
> "(2) Freedom of Speech and Assembly.—Every member of any labor organization shall have the right

to meet and assemble freely with other members; and to express any views, arguments, or opinions; and to express at meetings of the labor organization his views, upon candidates in an election of the labor organization or upon any business properly before the meeting, subject to the organization's established and reasonable rules pertaining to the conduct of meetings: Provided, That nothing herein shall be construed to impair the right of a labor organization to adopt and enforce reasonable rules as to the responsibility of every member toward the organization as an institution and to his refraining from conduct that would interfere with its performance of its legal or contractual obligations.

"(5) Safeguards Against Improper Disciplinary Action.—No member of any labor organization may be fined, suspended, expelled, or otherwise disciplined except for nonpayment of dues by such organization or by any officer thereof unless such member has been (A) served with written specific charges; (B) given a reasonable time to prepare his defense; (C) afforded a full and fair hearing."

The complaint also alleges a violation of § 609 of the Act, 29 U. S. C. 529, which reads as follows:

"Prohibition on Certain Discipline by Labor Organization.

"It shall be unlawful for any labor organization, or any officer, agent, shop steward, or other representative of a labor organization, or any employee thereof to fine, suspend, expel, or otherwise discipline any of its members for exercising any right to which he is entitled under the provisions of this chapter. The provisions of section 412 of this title shall be applicable in the enforcement of this section."

Venue as to the foregoing violations is governed by § 102 of the Act, 29 U. S. C. 412, which reads as follows:

> "Civil Action for Infringement of Rights; Jurisdiction.—
>
> "Any person whose rights secured by the provisions of this subchapter have been infringed by any violation of this subchapter may bring a civil action in a district court of the United States for such relief (including injunctions) as may be appropriate. Any such action against a labor organization shall be brought in the district court of the United States for the district where the alleged violation occurred, or where the principal office of such labor organization is located."

Among the subsidiary questions presented with respect to the foregoing violations are the following:

(1) Where plaintiffs, members of a local labor union, are by resolution of the Executive Council of the International Union adopted in Kansas City, Kansas, wrongfully deprived of their equal rights to "nominate candidates, . . . vote in elections or referendums of the labor organization, . . . to participate in the deliberations and voting upon the business of such meetings, . . ." (§ 101 (a) (1) of the Act), does the deprivation of their rights (this being the violation of the Act) occur solely and exclusively in Kansas City where such rights have never been exercised by the plaintiffs; or does it occur at least in substantial part in the Middle District of Tennessee where such local labor organization has its principal and only office, where the plaintiff members for the most part reside and where such rights have always been exercised by the plaintiffs and where they would continue to be exercised except for their deprivation?

(2) Where plaintiffs, members of a local labor union, are by resolution of the Executive Council of the Inter-

national Union adopted in Kansas City, Kansas, wrongfully deprived of their right to meet and assemble freely with other members, to express any views, arguments or opinions, etc. (§ 101 (a) (2) of the Act), does the deprivation of such rights (which is the violation of the Act) occur solely and exclusively in Kansas City, Kansas, in which place such rights have never been exercised; or does it occur at least in substantial part in the Middle District of Tennessee where such rights have always been exercised and where they would continue to be exercised except for their deprivation?

(3) Where plaintiffs, individual members of a local labor union and such union itself, are by resolution of the Executive Council of the International Union adopted in Kansas City, Kansas, expelled or disaffiliated from a District Lodge, does such expulsion or disaffiliation occur solely and exclusively in Kansas City, Kansas, where neither the local union nor the District Lodge has an office, where neither engages in business, and where the individual members do not reside; or does such expulsion or disaffiliation occur at least in substantial part in the Middle District of Tennessee where the local union has its office, where the individual plaintiffs live, and where both the local and the District Lodge engage in business, and where the individual plaintiffs enjoy the privileges, reap the benefits and discharge the obligations of membership in said District Lodge, and where the District Lodge actually exercises its control over the local union and its members?

The complaint also alleges a violation of the plaintiffs' rights to nominate candidates, to be a candidate and to hold office and to vote for or otherwise support a candidate of their choice, which rights are conferred by § 401 of the Act, 29 U. S. C. 481. Sub-section (c) contains the following provision:

"In any election required by this section which is to be held by secret ballot a reasonable opportunity shall be given for the nomination of candidates and every member in good standing shall be eligible to be a candidate and to hold office (subject to section 504 and to reasonable qualifications uniformly imposed) and shall have the right to vote for or otherwise support the candidate or candidates of his choice, without being subject to penalty, discipline, or improper interference or reprisal of any kind by such organization or any member thereof."

With respect to the last mentioned violation, the Act contains a specific provision as to venue only as to the actions brought by the Secretary of Labor. An action brought by individuals must therefore fall within the general provisions of the Code relating to venue, 28 U. S. C., §§ 1391 and 1392.

The question is then presented whether venue of an action brought by plaintiffs to assert and enforce rights conferred by § 401 of the Act is governed by the general venue statutes.

4.

THE STATUTE INVOLVED.

The most pertinent provisions of the Labor Management Reporting and Disclosure Act of 1959, known as the Landrum-Griffin Act, Public Law 86-257, 73 Stat. 519, have already been quoted. Section 3 of the Act, 29 U. S. C., § 402, entitled Definitions, is also material.

"Section 3 (d) defines person as follows:

"'Person' includes one or more individuals, labor organizations, partnerships, associations, corporations,

legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in bankruptcy, or receivers.

"Section 3 (o) defines member as follows:

"'Member' or 'member in good standing', when used in reference to a labor organization, includes any person who has fulfilled the requirements for membership in such organization, and who neither has voluntarily withdrawn from membership nor has been expelled or suspended from membership after appropriate proceedings consistent with lawful provisions of the constitution and bylaws of such organizations.

"Section 3 (i) defines labor organization as follows:

"'Labor organization' means a labor organization engaged in an industry affecting commerce and includes any organization of any kind, any agency, or employee representation committee, group, association, or plan so engaged in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment, and any conference, general committee, joint or system board, or joint council so engaged which is subordinate to a national or international labor organization, other than a State or local central body."

STATEMENT OF THE CASE

A. **Parties.**

The petitioners, plaintiffs in the District Court and plaintiffs-appellants in the Court of Appeals, are:

(1) Lodge No. 42 of the International Brotherhood of Boilermakers, etc., an unincorporated labor organization with its headquarters in Nashville, Davidson County, Tennessee (in the Middle District of Tennessee), consisting of approximately ninety (90) individual members substantially all of whom live in the Middle District of Tennessee;

(2) Each and every member of said Lodge No. 42;

(3) The three (3) individual members of Lodge No. 42 namely John Parkhurst, Wallace L. Clark and Clyde Turner.

Lodge No. 42 is a subordinate Lodge of the International Brotherhood of Boilermakers, etc., and the individual members of Lodge No. 42 are likewise members of said International Brotherhood. Lodge No. 42 and its individual members are (or rather were until expelled therefrom) members of District Lodge No. 57 of the International Brotherhood of Boilermakers, etc.

Respondents. The respondents, the defendants in the District Court and the defendants-appellees in the Court of Appeals are:

(1) The International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers, generally referred to as the International Brotherhood, an unincorporated labor organization or union with its principal office in Kansas City, Kansas;

(2) District Lodge No. 57 of said International Brotherhood, this respondent being generally referred to as District Lodge No. 57, with its principal office and headquarters in Chattanooga, in the Eastern District of Tennessee. District Lodge No. 57 is an unincorporated labor organization, a subordinate Lodge of said International Brotherhood, with vast and almost unlimited powers over the local lodges affiliated with it and also over any other local lodges within its assigned geographical and trade area not affiliated with it and expecially over Lodge No. 42 and its individual members who, notwithstanding their expulsion, are still under the jurisdiction of said District Lodge and pay dues to it. Lodge No. 42 was affiliated with and a part of District Lodge No. 57 from July 15, 1955, until its expulsion by the International Brotherhood in January of 1962. Other lodges still affiliated with District Lodge No. 57 are Lodge No. 263 at Memphis, Tennessee, Lodge No. 453 at Knoxville, Tennessee, Lodge No. 455 at Sheffield, Alabama, and Lodge No. 679 at Chattanooga, Tennessee. The territorial jurisdiction of Lodge No. 57 includes all or substantially all of Tennessee and part of Alabama.

The respondents are generally referred to in this Petition as the defendants.

B. **Nature of the Action.**

The plaintiffs alleged five (5) specific violations of the Labor Management Reporting and Disclosure Act, herein referred to as the Act, by the defendants. They sought the following relief:

(1) A decree and adjudication that their expulsion from the District Lodge was wrongful and void.

(2) For a decree of reinstatement with a restoration to Lodge No. 42 and all of its members and officers of all rights formerly possessed and enjoyed by them.

(3) For a judgment for all fees, assessments and monies paid by the local Lodge and its members to District Lodge No. 57 from the date of its expulsion until its reinstatement.

(4) For such injunctions as might be necessary or proper, for a judgment for all damages sustained, and for general relief.

C. Essential Averments of the Complaint. (Appendix References Are to Transcript of the Record.)

In the hierarchy of the Boilermakers set-up, the local Lodge has few powers and they are rather insignificant. It collects dues for the District Lodge and for the International Brotherhood. The traditional powers of labor organizations are however exercised by the District Lodge, the executive officer of which is the Business Manager-Executive Secretary. In blunt language he is a dictator. He is responsible for and has full authority for organizing, negotiations, grievances, appointment of job stewards and collective bargaining committees, assignment of jobs, collection of dues, etc. Such powers appear clearly in section 3 of Article 7 of the By-Laws of District Lodge No. 57 quoted in paragraph 9 of the Complaint, Appendix page 12a.

Prior to its expulsion, Lodge No. 42 had the same representation in the conventions of District Lodge No. 57 as did the other Lodges, that is the members elected delegates to the conventions of said District Lodge. Its members had also the same rights to be nominated to office in the District Lodge and to be elected and serve as such. The plaintiff Turner was a member of the District Council of said District Lodge No. 57 and was also a member of the Board of Trustees thereof. The plaintiffs Parkhurst and Clark were delegates to the last convention of District Lodge No. 57. As such delegates they exercised the same

rights in said District Lodge as did delegates from other affiliated Lodges, such for example as nominating and being nominated for officers in said Lodge, voting for said officers, and voting on all business matters that arose.

A controversy arose between Lodge No. 42 and the members of same on the one hand and J. H. Hardin, Business Manager-Executive Secretary, on the other. Hardin exercised his powers tyrannically, squandered thousands of dollars. Plaintiffs protested his actions, they exercised their rights of free speech at their own Lodge meeting in Nashville, Tennessee, and at the convention of the District Lodge No. 57 which was held in Chattanooga. Especially did plaintiff Parkhurst, delegate from Lodge No. 42, oppose the vicious and sinister plans and schemes of the said Hardin and denounced his plan to increase the field dues required to be paid by the members of the various Lodges. For exercising such rights of free speech and assembly, Parkhurst and his Lodge No. 42 were denounced by Hardin and Hardin vowed revenge and at a meeting of Lodge No. 42 in Nashville stated that he would have Lodge No. 42 expelled from District Lodge No. 57 (paragraph 7 of Complaint, Appendix page 9a). District Lodge No. 57 at its meeting in Chattanooga, Tennessee, on September 28-29, 1961, upon the insistence of J. H. Hardin, adopted a resolution requesting "the International Brotherhood and the Executive Council to remove Local Lodge 42 from Affiliation with District 57" (paragraph 8 of Complaint, Appendix page 10a). The International Brotherhood notified District Lodge No. 57 that the resolution would be placed on its agenda at its next meeting, and took the position that it was not a grievance but that it was a matter over which the Executive Council had plenary powers. Lodge No. 42 was further advised that it could have a representative appear at the meeting of the Executive Council in Kansas City, Kansas, which was held January 15-19, 1962, for the purpose of expressing the

views of Lodge No. 42. No written specific charges were served upon plaintiff Lodge or any of its members or officers, nor was a full hearing afforded plaintiffs. No evidence was heard and plaintiffs were not at any time advised that they would be given an opportunity to examine and cross-examine witnesses. The hearing was of a perfunctory and superficial nature, with one representative from Lodge No. 42 and one from District Lodge No. 57 afforded the opportunity of presenting their respective views, after which the Executive Council of the International Brotherhood, in accordance with a conspiracy between it and the said J. H. Hardin and District Lodge No. 57, expelled or disaffiliated Lodge No. 42 from District Lodge No. 57.

The result is that the members of Lodge No. 42 remain under the dominion and control of District Lodge No. 57, pay dues and tribute to it, are absolutely controlled by it, but they have no representation at all in District Lodge No. 57, no delegate to the conventions, no members on the Board of Trustees, and no member on the District Council. They have absolutely no voice and no representation in the organization which controls them. Individual members of Lodge No. 42 have thus been deprived of their right to nominate and vote for delegates to the conventions of District Lodge No. 57, and to be nominated and elected to such positions; they have been deprived of their rights to be elected as officers of District Lodge No. 57 and as members of the Board of Trustees and as members of the District Council (paragraph 10 of the Complaint, Appendix page 12a).

The members of Lodge No. 42 were by the defendants, in violation of § 101 (a) (1) of the Act, deprived of equal rights with the members of the Chattanooga, Memphis, Knoxville and Sheffield Lodges to "nominate candidates" for the position of delegates to District Lodge No. 57 con-

ventions, to "vote in elections" in which such delegates are to be elected and to vote in "referendums of the labor organization, to attend membership meetings and to participate in the deliberations and voting upon the business of such meetings."

All members of Lodge No. 42, and particularly the three named individual plaintiffs, were deprived of the right of freedom of speech and freedom of assembly under § 101 (a) (2) of the Act.

The plaintiffs were likewise deprived of their rights with respect to election of delegates to the District conventions, contrary to § 401 of the Act, namely, the right to nominate candidates, the right to be a candidate and to hold office if elected, and the right to vote for and support the candidate of their choice. Furthermore, the expulsion of Lodge No. 42 and its members from District Lodge No. 57 was a clear violation of § 101 (a) (5) of the Act and of

609

With respect to the district in which the violations of the Act occurred, the facts are stated in paragraph 13 of the Complaint, which reads as follows:

> "Plaintiffs respectfully aver that their rights, secured by said Act and which have been infringed by the violation of said law by the defendants and said rights of which they have been totally deprived by said defendants, are rights which are exercised for the most part and principally in the judicial district of this Court and particularly in Davidson County, Tennessee. The plaintiff Lodge has its meetings in Davidson County, Tennessee; it is at said meetings that plaintiffs have exercised their right of free speech and free assembly and have protested the actions of the defendant District Lodge and its representatives; it is in Davidson County, Tennessee, where the members of plaintiff Lodge elect delegates

to the conventions held by the District Lodge No. 57; and it is in the judicial district of this Honorable Court where for the most part the members of plaintiff Lodge work and where they are supervised, directed and controlled by District Lodge No. 57. Although the resolution requesting expulsion or disaffiliation was adopted at a meeting held in Chattanooga, Tennessee, and the meeting of the Executive Council of the International Brotherhood was held in Kansas City, Kansas, at which time action was taken expelling the local Lodge from District Lodge No. 57, said expulsion in its real operation and effect has taken place and occurred in the judicial district of this Honorable Court and it is in this district where the rights of plaintiffs have actually been destroyed. Plaintiffs aver therefore that venue is properly laid in this Honorable Court by virtue of § 102 of said Act, 29 U. S. C. A., § 412.

D. Order of the United States District Court.

With respect to the wrongful expulsion of Lodge No. 42 and its members from District Lodge No. 57, the District Court ruled that such expulsion or disaffiliation did not occur in the Middle District of Tennessee.

With respect to the district in which the membership rights were destroyed, the Court ruled as follows:

> "The plaintiffs contend that the membership rights they are seeking to vindicate against infringement by the defendants were exercised in this district, and therefore the violation of those rights took effect in this district. The right directly asserted, however, is the right to be represented in the District Lodge, a right that can, so far as this complaint shows, be exercised only in Chattanooga."

The last quoted provision from the Court's opinion is most amazing in that it holds in substance that the right

to nominate a candidate, to support that candidate, to vote in elections and to vote in referendums and to freely state their views and to freely assemble in membership meetings are of no significance whatsoever so long as there is a representative of such members attending the meetings in Chattanooga. It is perfectly obvious that the right of representation insisted upon in the Complaint includes the right to select representatives as well as the right to have representatives. It is obvious that the rights conferred by the Act upon the individual members to nominate and select their representatives to the District Lodge and to vote for them were never exercised anywhere except in Nashville in the Middle District of Tennessee and hence the destruction of these rights occurred where they were normally exercised. They were never exercised in any district except in the Middle District of Tennessee where this suit was brought.

E. **Judgment and Opinion of the Court of Appeals.**

The ruling of the District Court was affirmed without qualification by the Court of Appeals. The opinion of the Court of Appeals avoids any mention of the clear, unequivocal allegations of the Complaint that the members' rights which were violated and destroyed by the defendants were exercised in the Middle District of Tennessee. The opinion holds in substance also that an expulsion of one organization and its members from another organization does not occur where the ties of membership exist and where the privileges of membership are enjoyed and where the obligations of membership are discharged; and further holds in substance that such expulsion occurs where and only where a resolution of expulsion is adopted even though the adoption of such resolution takes place hundreds of miles from where either of the parties has any existence.

ARGUMENT.

Importance and significance of the question presented.

The Court of Appeals for the Sixth Circuit has decided an important question of Federal law, namely venue, which has not been but should be settled by this Court. The identical question has not been decided by any other Court of Appeals and research of counsel has not discovered a case in which the identical or similar factual questions were presented to any United States District Court.

The question is important not only because the decision of the Court of Appeals affects vitally the rights of Lodge No. 42 and its ninety (90) individual members but more importantly it affects and in most instances destroys the rights of the hundreds of thousands of individual members of local labor unions throughout the United States. The decision of the Court of Appeals represents a tremendous victory for gigantic labor organizations in their determined effort to perpetuate the evils which the Statute in question sought to cure.

It is common knowledge that ultimate authority in labor organizations is vested in the International Union or in an Executive Council of the International Union. It is well known that official action by the International Union is taken at the International headquarters. If *therefore, as was held by the District Court and the* Court of Appeals in the instant case, expulsion of a local lodge and its members from membership in a district lodge occurs solely, wholly and exclusively in that place where the Executive Council of the International Union adopts a resolution of expulsion and does not occur substantially in that place where the local organization and

its members have their principal office and reside and where it, they and the district lodge all carry on business and where the ties of membership exist and the benefits of membership are enjoyed and the obligations of membership discharged; or if, as the Court of Appeals held, the violation of the Act occurs where such formal action on the part of the Executive Council is taken rather than in the place where the members' rights secured by the Act are actually destroyed, the individual members in effect have no remedy. The significance of the opinion and ruling of the Court of Appeals is that, while the Statute purports to give specific rights, it forces the individual members of local organizations to litigate away from home, in many instances thousands of miles, which is wherever the principal office of the International organization is located. Thus the individual member in Galveston, Texas, may have to go to Indianapolis, Indiana, or the individual member in Honolulu may have to go to the City of Washington, D. C., or to some other distant point where he may bring suit against the International Brotherhood. Neither the individual member nor a small band of individual members has the necessary financial resources to litigate in distant cities and at such enormous expense.

The Act constitutes remedial legislation.

The Act constitutes remedial legislation and its provisions including those relating to venue should be construed liberally so as to give members of labor organizations an effective remedy in the judicial district where their rights are actually violated. Substance should not be sacrificed to form. Individual rights secured by the Act should be enforced and vindicated in the judicial district where such rights are normally exercised and where they are destroyed by the wrongful and unlawful acts of defendants.

Expulsion of Lodge No. 42 and its members from District Lodge No. 57 occurred, at least substantially, in the Middle District of Tennessee.

In determining where expulsion of Lodge No. 42 and its members from District Lodge No. 57 occurred, both the District Court and the Court of Appeals took a narrow, unrealistic view of the meaning of expulsion. Their ruling was that the adoption of a resolution constituted the totality of expulsion. The lower Courts in effect confused, as it were, a declaration of war with the actual carrying on of war. Expulsion means much more than the mere adoption of a resolution. Such resolution calling for expulsion without placing said order in effect is a meaningless group of words. While the adoption of the resolution may well be considered one step in the act of expulsion, it is not by any means the primary or final step. The culmination of the process took place in the Middle District of Tennessee where Lodge No. 42 had its headquarters, where its members resided and where they exercised the rights conferred upon them by the Act and where such rights were destroyed by the defendants.

In the very nature of the case suspension of a person from membership in an organization occurs where the organization exists and carries on its activities and where the member enjoys the privileges, reaps the benefits, carries on the activities and discharges the obligations incidental to membership.

Expulsion in its real comprehensive meaning cannot occur where the organization has no existence, does no business and carries on none of its activities and where the member expelled does not live, does not work, does not enjoy any benefits of membership and does not carry on any of the activities incidental to membership.

In this case District Lodge No. 57 and Lodge No. 42 and all its members do business in the Middle District of Tennessee. Not one of them has any legal or actual

existence in Kansas City, Kansas, and not one of them does any business in Kansas City. The relationship between Lodge No. 42 and its members and the District Lodge are relationships that exist in the Middle District of Tennessee. The following illustrations are analogous:

a. The Blue Grass Country Club has its club house, golf course, boat dock and other physical properties in Sumner County, Tennessee, some twenty (20) miles away from Nashville in Davidson County, Tennessee. The Board of Directors meets in Nashville and suspends a member. Thereafter he is denied all privileges of membership. He no longer plays golf, no longer attends the festivities in the club house, no longer swims in the pool. The activities which are now denied him are all activities normally exercised where the physical properties of the club are located. The suspension actually occurs, at least substantially, and for the most part, in Sumner County, Tennessee.

b. An iron worker engaged in construction of a bridge over the Cumberland River in Nashville where he lives is wrongfully suspended from union membership for a period of thirty (30) days by the action of the business agent of his union in Memphis, Tennessee. As the result he is deprived of employment for thirty (30) days. Where are his rights violated? Where does the suspension really occur? The answer is in Nashville, Tennessee.

c. The Ford Motor Company has a plant in Nashville, Tennessee. One of its employees, member of the United Automobile Workers Union, is disciplined without the safeguards specified in 101 (a) (5) of the Act and as the result loses his seniority rights and fails to get a promotion to which he was entitled by virtue of seniority. The disciplinary action was expressed in the form of a resolution, adopted by an executive committee of the union in Detroit, Michigan. It is obvious that this employee's rights were violated in Nashville, Tennessee.

that being the only place where his seniority rights existed and that being the only place where they were violated, and that being the place where he failed to get the job to which he was entitled. The violation of the Act in his case occurred in Nashville, Tennessee.

d. Vanderbilt University has its principal office and its principal colleges in Nashville, Tennessee. It also has a branch located in Paris, France. Ultimate authority rests with the Board of Trustees who meet in Nashville, Tennessee. The Board of Trust meets in Nashville and wrongfully expels a student from its Paris branch. The essence of the expulsion is the severance of the ties between the student and the University which exist in the place where he attended school. His right to attend lectures, to read the books in the library, to participate in campus activities is a right that was never exercised anywhere except in Paris, France. His expulsion is simply the denial of these rights and the expulsion occurs where the rights had been exercised.

The destruction of petitioners' equal rights and their right of freedom of speech and assembly secured by § 101 (a) (1) and (a) (2) of the Act occurred in the Middle District of Tennessee where such rights were normally exercised and would continue to be exercised except for the wrongful acts of the defendants.

Significantly the denial of the rights conferred by subsections (a) (1) and (a) (2) of § 101 constitutes separate and distinct violations of the Act. It matters not what means or methods are used by the wrong-doer in destroying those rights, the weapon may be expulsion, it may be violence, it may be loss of employment, it may be discrimination of one sort or another. The weapon may be an act specifically prohibited by some other provision of the law in question but it need not be specifically prohibited by any other provision of the Act.

Expulsion, which has hereinabove been discussed, is therefore a separate and distinct violation from the destruction of petitioners' equal rights to nominate candidates, to vote at meetings and to exercise their rights of freedom of speech and assembly.

It appears plain therefore that insofar as § 101 (a) (1) and (a) (2) is concerned, the denial of the rights therein mentioned is a violation of the Act and occurs where those rights are destroyed. And this is true irrespective of where the expulsion may have occurred.

The individual members of Lodge No. 42 meet, assemble, nominate delegates to the District Lodge, and vote for delegates, all in Nashville, Tennessee. They exercise none of the rights conferred by § 101 (a) (1) and (2) of the Act anywhere except in Nashville in the Middle District of Tennessee.

Logically and inescapably the violation of the Act in this regard occurred in the Middle District of Tennessee.

The petitioners therefore pray that a writ of certiorari be granted to the end that this cause may be reviewed and determined by this Honorable Court as provided for by the Statute of the United States, and that the judgment herein of said United States Court of Appeals for the Sixth Circuit be reversed, and for such further relief as to this Court may seem proper.

Respectfully submitted,

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Attorneys for Petitioners.

APPENDIX.

In the
United States District Court
For the Middle District of Tennessee,
Nashville Division.

Lodge No. 42 of the International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers; John Parkhurst; Wallace L. Clark and Clyde Turner,	
vs.	Civil No. 3213.
International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers, and District Lodge No. 57 of the International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers.	

Order.

(Received for Entry August 1, 1962.)

The defendants' motion to dismiss this case challenges the service of process on one of the defendants, the jurisdiction of the subject matter, and the venue of the cause of action. The issues were argued at length on the hearing July 30, 1962, and both sides have submitted briefs. Since the case would in any event have to be dismissed for improper venue; it will be unnecessary to discuss the process and jurisdictional questions.

The complaint purports to state a cause of action under the Labor-Management Reporting and Disclosure Act of

1959, Public Law 86-257, 72 Stat. 519, 28 U. S. C., §§ 401 et seq. It seeks relief from the International Brotherhood's action, taken in Kansas City, Kansas, in "disaffiliating" Lodge No. 42 from District Lodge No. 57 in pursuance of a resolution adopted by the District Council of the District Lodge at its headquarters in Chattanooga, Tennessee. The plaintiffs contend the disaffiliation was punitive action that violated rights guaranteed to them and to the 90 members of Lodge No. 42 by the Act.

Section 102 of the Act, 29 U. S. C., § 412, which confers jurisdiction on the district courts of the United States to grant civil relief for violations of rights protected by the Act specifies the venue in the following language:

> "Any such action against a labor organization shall be brought in the district court of the United States for the district where the alleged violation occurred, or where the principal office of such labor organization is located."

Counsel have called the court's attention to no cases interpreting this or any analogous statutory language, and the court has found none. Neither of the defendants has its principal office in this district, and neither is alleged to have done anything in this district. The plaintiffs contend that the membership rights they are seeking to vindicate against infringement by the defendants were exercised in this district, and therefore the violation of those rights took effect in this district. The right directly asserted, however, is the right to be represented in the District Lodge, a right that can, so far as this complaint shows, be exercised only in Chattanooga. Thus, on any view of the venue provisions of Section 102, the venue is not properly laid in this district.

The plaintiffs also invoke the general venue statutes, 28 U. S. C., §§ 1391-93. These statutes cannot apply in

the face of the specific venue provisions of the Act, **Fourco Glass Co. v. Transmirra Products Corp.**, 353 U. S. 222 (1957), and even if they were so applicable, the facts alleged in this complaint fail to bring the case within them.

Accordingly, it is Ordered that the complaint be, and it is hereby, dismissed without prejudice.

Enter:

Frank Gray, Jr.,
United States District Judge.

Attest: A True Copy.

Andrew H. Mizell,
Clerk U. S. District Court,
Middle District of Tennessee.
By Betty Crotsen, D. C.

(Seal)

No. 15,144.

United States Court of Appeals
For the Sixth Circuit.

Lodge No. 42 of the International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers, John Parkhurst, Wallace L. Clark, and Clyde Turner, Plaintiffs-Appellants, v. International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers, and District Lodge No. 57 of the International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers, Defendants-Appellees.	Appeal from the United States District Court for the Middle District of Tennessee, Nashville Division.

Opinion of Court of Appeals

Decided November 18, 1963.

Before: O'Sullivan, Circuit Judge, and Kalbfleisch and Peck, District Judges.

Per Curiam. The fourteen-page complaint, to which detailed exhibits are appended, essentially complains of an alleged wrong done to the plaintiffs by their expulsion from one of the defendant labor organizations. The district court sustained defendants' motion to dismiss the action on the ground that venue was not properly laid

in the district in which the complaint was filed, and the present appeal is from such dismissal.

The action was brought under The Labor Management Reporting and Disclosure Act of 1959, 73 Stat. 519, 29 U. S. C. 401, et seq., which is generally known as the Landrum-Griffin Act and which will be hereinafter referred to as the Act. The complaint alleges that Lodge No. 42 of the International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers (hereinafter referred to as Lodge No. 42) is what is ordinarily known as a labor union with headquarters at Nashville, Tennessee, and that the three individual plaintiffs held official positions therein. The defendant International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers (hereinafter referred to as the International) is stated to be a labor organization within the meaning of the Act with headquarters and principal office at Kansas City, Kansas, and the defendant District Lodge No. 57 of the International (hereinafter referred to as District Lodge No. 57) is also stated to be such a labor organization, with principal office and headquarters at Chattanooga, Tennessee. The complaint then alleges the exercise of "despotic powers" on the part of an official of District Lodge No. 57, who acted "tyrannically," and the expulsion of Lodge No. 42 therefrom as the result of "a sinister conspiracy between [the] defendants." It is upon this act of expulsion (or disaffiliation) that the action is predicated, and in determining the issue as to venue it therefore becomes important to determine where such act occurred. It will be recalled that the action was commenced in the District Court for the Middle District of Tennessee, and that Chattanooga, Tennessee, is situate in the Eastern District of Tennessee.

The complaint further alleges that the District Lodge No. 57 official above referred to publicly stated his inten-

tion to "obtain revenge" for certain acts done by a member of Lodge No. 42, and that to accomplish this "sinister scheme" he caused District Lodge No. 57, at a meeting held at Chattanooga, Tennessee, to adopt a resolution asking the International to expel or disaffiliate Lodge No. 42 from District Lodge No. 57. Thereupon, it is alleged, the Executive Council of the International, in session in Kansas City, Kansas, approved the request and expelled or disaffiliated Lodge No. 42 from District Lodge No. 57.

Section 102 of the Act (29 U. S. C., Section 412) provides in part:

> "Any such action against a labor organization shall be brought in the district court of the United States for the district where the alleged violation occurred, or where the principal office of such labor organization is located."

Whether an "alleged violation occurred" in the Eastern District of Tennessee when District Lodge 57 requested Lodge No. 42's disaffiliation, or whether an "alleged violation occurred" in the District of Kansas when the Executive Council passed the Resolution of Disaffiliation, are questions which need not be here determined. The only question presented is what if anything gave rise to a cause in the Middle District of Tennessee and in considering this question the trial judge pointed out that neither of the defendants has its principal office in that district and neither is alleged to have done anything there. We conclude, as he did, that, under the venue provisions of Section 102 of the Act, supra, venue was not properly laid in the district where the complaint was filed. This conclusion is in general accord with that reached in **Wirtz v. Cascade Employer's Assoc., Inc.**, and **Wirtz v. Harvey Aluminum, Inc.**, 219 F. Supp. 84 (D. C., 1963).

Affirmed.

Office Supreme Court, U.S.
FILED
JAN 22 1964
JOHN F. DAVIS, CLERK

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1963.

No. 750

LODGE NO. 42 OF THE INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIPBUILDERS, BLACKSMITHS, FORGERS AND HELPERS, JOHN PARKHURST, WALLACE L. CLARK and CLYDE TURNER,
Petitioners,

vs.

INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIPBUILDERS, BLACKSMITHS, FORGERS AND HELPERS, and DISTRICT LODGE NO. 57 OF THE INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIPBUILDERS, BLACKSMITHS, FORGERS AND HELPERS,
Respondents.

BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

To the United States Court of Appeals for the Sixth Circuit.

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INDEX.

	Page
Statement of the case	1
Argument	3
The alleged violation (disaffiliation of Local 42 from District 57) did not occur in the Middle District of Tennessee	3
General venue statutes are not applicable in the face of a specific venue statute	3
The questions presented by the petition are not of the nature, type or character which, pursuant to Rule 19 of the Supreme Court Rules, should be considered by the Court	4
Conclusion	5

Cases Cited.

Fourco Glass Co. v. Transmirra Prod. Corp., 353 U. S. 222 (1957)	4
Wirtz v. Cascade Employers Association, Inc., etc., and Wirtz v. Harvey Aluminum (Incorporated) et al., 219 F. Supp. 84 (D. C. 1963)	3

Statutes Cited.

28 U. S. C., §§ 1391, 1392 and 1393	3, 4
29 U. S. C. 401 et seq.	2, 3

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1963.

No. .....

LODGE NO. 42 OF THE INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIPBUILDERS, BLACKSMITHS, FORGERS AND HELPERS, JOHN PARKHURST, WALLACE L. CLARK and CLYDE TURNER,
Petitioners,

vs.

INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIPBUILDERS, BLACKSMITHS, FORGERS AND HELPERS, and DISTRICT LODGE NO. 57 OF THE INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIPBUILDERS, BLACKSMITHS, FORGERS AND HELPERS,
Respondents.

BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

To the United States Court of Appeals for the Sixth Circuit.

To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States:

MAY IT PLEASE THE COURT:

STATEMENT OF THE CASE

For the sake of brevity, Lodge No. 42 of the International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers, will hereinafter be referred to as "Local 42"; District Lodge No. 57 of the

International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers will hereinafter be referred to as "District 57"; the International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers will hereinafter be referred to as "International Union." The Labor-Management Reporting & Disclosure Act of 1959, 73 Stat. 519, 29 U. S. C. 401 et seq., will be referred to as the "Act." The Petition for Writ of Certiorari will hereinafter be referred to as "Petition."

This cause was heard in the Federal District Court for the Middle District of Tennessee on the original complaint and on a motion to dismiss the complaint filed by respondents. The District Court dismissed the complaint because of improper venue and this decision was affirmed by the United States Court of Appeals for the Sixth Circuit.

The original complaint alleged that the plaintiff was an unincorporated association with its headquarters in Nashville, Tennessee; and that the individual members of Local 42 were likewise members of the International Union. The complaint also stated that the principal office of District 57 was in Chattanooga, Tennessee, and that the principal office of the International Union was in Kansas City, Kansas. The complaint expressly named and listed the other Local Lodges which comprised the membership of District 57.

Said original complaint affirmatively stated that the resolution to disaffiliate Local 42 from District 57 was adopted at a meeting in Chattanooga, Tennessee, and approved in Kansas City, Kansas, by the executive council of the International Union.

ARGUMENT.

The alleged violation (disaffiliation of Local 42 from District 57) did not occur in the Middle District of Tennessee.

Petitioners aver that venue was properly laid in the United States District Court for the Middle District of Tennessee by virtue of Section 102 of the Act, 29 U. S. C., Sec. 412. This section states in part:

> "Any such action against a labor organization shall be brought in the district court of the United States for the district where the alleged violation occurred, or where the principal office of such labor organization is located."

The affirmative allegations of the original complaint show that the principal office of District 57 is located in Chattanooga, Tennessee (Eastern District), and the principal office of the International Union is located in Kansas City, Kansas. These facts are admitted on pages 9 and 10 of the petition.

The affirmative allegations of the original complaint likewise show that no violation of the Act occurred in the Middle District of Tennessee because the resolution to disaffiliate Local 42 was adopted in Chattanooga, Tennessee, and approved in Kansas City, Kansas. These facts are expressly admitted on pages 12 and 13 of the petition. Respondents' position on this point is in accord with **Wirtz v. Cascade Employers Association, Inc., etc.**, and **Wirtz v. Harvey Aluminum (Incorporated) et al.**, 219 F. Supp. 84 (D. C. 1963).

General venue statutes are not applicable in the face of a specific venue statute.

Petitioners also allege proper venue by virtue of the general venue statutes contained in 28 U. S. C., sections 1391

1392 and 1393. Respondents would respectfully show that the above-cited general venue statutes are not applicable to this case because a special venue statute (section 102 of the Act) pertains to this particular type of action.

In **Fourco Glass Co. v. Transmirra Prod. Corp.**, 353 U. S. 222 (1957), the United States Supreme Court held:

> "We think it is clear that Section 1391 (c) is a general corporation venue statute, whereas section 1400 (b) is a special venue statute applicable, specifically, to all defendants in a particular type of actions, i. e., patent infringement actions. In these circumstances the law is settled that 'However inclusive may be the general language of a statute, it will not be held to apply to a matter specifically dealt with in another part of the same enactment. . . . Specific terms prevail over the general in the same or another statute which otherwise might be controlling.'"

> "We hold that 28 U. S. C., Section 1400 (b), is the sole and exclusive provision controlling venue in patent infringement actions, and that it is not to be supplemented by the provisions of 28 U. S. C., section 1391 (c)."

(353 U. S. at pp. 228, 229.)

The questions presented by the Petition are not of the nature, type or character which, pursuant to Rule 19 of the Supreme Court Rules, should be considered by the Court.

The Petition shows on its face that the Court of Appeals for the Sixth Circuit did not render a decision in conflict with the decision of another Court of Appeals on the same matter; did not decide an important state or territorial question; did not decide an important question of Federal law not previously settled by the Supreme Court; did not decide a federal question in a way to conflict with appli-

cable decisions of the Supreme Court, and did not decide any question of a nature calling for an exercise of the Supreme Court's power of supervision.

The petition affirmatively shows that it does not concern any of the matters enumerated in Rule 19.

CONCLUSION

In light of the above-cited authorities the Petition should be denied.

Respectfully submitted,

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Certificate of Service

I, Cecil D. Branstetter, one of the Attorneys for the Respondents, International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers, and District Lodge No. 37 of the International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers, and a member of the Bar of the Supreme Court

of the United States, hereby certify that on the [illegible] day of January, 1964, I have served copies of the within Brief for the Respondents on Lodge No. 42 of the International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers, John Parkhurst, Wallace L. Clark and Clyde Turner, by mailing said copies in a duly addressed envelope, postage duly prepaid to their Counsel of record, James C. Havron and Claude Callicott, 543 Nashville Bank & Trust Building, Nashville, Tennessee, 37201

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